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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,816	06/18/2001	W. Reed Hastings	56055-0013	5101
29989	7590	09/06/2005	EXAMINER	
HICKMAN PALERMO TRUONG & BECKER, LLP			ZURITA, JAMES H	
2055 GATEWAY PLACE			ART UNIT	
SUITE 550			PAPER NUMBER	
SAN JOSE, CA 95110			3625	

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/884,816

Applicant(s)

HASTINGS ET AL.

Examiner

James H. Zurita

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-13,16-24,28,31-38 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-13,16-24,28,31-38 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Prosecution History

On 18 June 2001, applicant filed the instant application, which is a continuation in part of 09/561041, filed 28 April 2000, now US Patent 6,584,450. The instant application claims priority from provisional application 60/212193, filed on 16 June 2000, and from provisional application 60/244793, filed on 31 October 2000.

On 5 October 2004, the Examiner mailed an Election/Restriction Requirement.

On 19 October 2004, applicants elected claims 1-24 and 28-41 for prosecution.

On 8 November 2004, the Examiner issued a first Office Action, rejecting elected claims 1-24 and 28-41. Claims 25-27 were withdrawn from consideration.

On 14 February, 2005, applicant filed a response to the first Office Action.

Response to Amendment

By amendment of 14 February 2004, applicant cancelled claims 2, 3, 14, 15, 29, 30 and 39-41. Applicant amended claims 1, 4-8, 13, 16-20 and 28, and added claim 42.

Claims 1, 4-13, 16-24, 28, 31-38 and 42 are pending in this application.

Response to Arguments

Applicant's arguments filed 14 February 2005 have been fully considered.

Rejection of claims 39-41 under 35 USC 112 is moot in view of their cancellation.

Rejection of claims 1-12 under 35 USC 101 is withdrawn in view of amendment.

Applicant's arguments concerning rejection of claims have been very carefully considered but are not persuasive.

Applicant argues that a selected portion of Chislenko does not disclose "...identifying a one or more items that have been rated favorably by a user..." (formerly claim 2, now part of claim 1). In response to this argument, the Examiner respectfully directs applicant's attention to other portions of the reference that disclose this limitation. See, for example, at least Col. 4, lines 40-55.

Applicant argues that a selected portion of Chislenko does not disclose "...identifying one or more items that ...have ratings that satisfy a minimum rating threshold..." (formerly claim 3, now part of claim 1). In response to this argument, the Examiner respectfully directs applicant's attention to at least Col. 7, lines 40-65, which discloses this limitation.

The Examiner cites particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-24 and 28-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Chislenko U.S. Patent Number 6,041,311.

As per claim 1. Chislenko discloses a computer-implemented method for estimating how a user would rate an item that the user has not yet rated, the method comprising the steps of:

- (a) In a computer system, identifying one or more items that
 - have been rated favorably by a user [See, for example, at least Col. 3, lines 38-57, "Each user profile associates items with the ratings given to those items by the user." For favorable ratings, see at least Col. 8, lines 19-35 and Col. 4, lines 40-55, concerning indications that a user likes a page, for example]; and
 - have ratings that satisfy a minimum rating threshold. See, for example, at least references to thresholds used to calculate similarity factors between users, as in Col. 7, lines 40-65.
- (b) In a computer system, identifying one or more other users that have rated the one or more items (Chislenko: Col. 4, lines 56-65, "Each item profile records how particular users have rated this particular item.") and given ratings to the one or more items that are substantially similar to ratings given by the user to the one or more items (Chislenko: Col. 2, lines 40-54); and

(c) In a computer system, estimating how the user would rate the item that the user has not yet rated based upon how the one or more other users rated the item (Chislenko: Col. 2, lines 20-30: "The ratings given to items by the neighboring users as well as the weights assigned to those neighboring users are then used to predict ratings and to make recommendations of items that the user has not yet rated.").

As per claim 4. Chislenko further discloses a method wherein the step of identifying one or more other users that have rated the one or more items and given ratings to the one or more items that are substantially similar to ratings given by the user to the one or more item includes identifying one or more other users that have rated the one or more items and given ratings to the one or more items that are within a specified amount of ratings given by the user to the one or more items (Chislenko: Col. 9, line 62 to Col. 10, line 6).

As per claim 5. Chislenko further discloses a method wherein the step of identifying one or more other users that have rated the one or more items and given ratings to the one or more items that are within a specified amount of ratings given by Application/Control Number: 09/884,816 Page 7 Art Unit: 3625

the user to the one or more items includes for each item from the one or more items, determining whether the rating given by the one or more other users is within a specified amount of the rating given by the user (Chislenko: Col. 9, line 62 to Col. 10, line 6).

As per claim 6. Chislenko further discloses a method wherein the step of identifying one or more other users that have rated the one or more items and given

ratings to the one or more items that are within a specified amount of ratings given by the user to the one or more items includes determining whether an average of the ratings given by the one or more other users to the one or more items is within a specified amount of an average of the ratings given by the user to the one or more items (Chislenko: Col. 7, lines 13-28).

As per claim 7. Chislenko further discloses a method wherein the step of estimating how the user would rate the item that the user has not yet rated based upon how the one or more other users rated the item includes comparing the ratings given by the one or more other users to the one or more items to ratings given by the one or more other users to the item that the user has not yet rated (Chislenko: Col. 2, lines 20-30).

As per claim 8. Chislenko further discloses a method wherein the step of comparing the ratings given by the one or more other users to the one or more items to ratings given by the one or more other users to the item that the user has not yet rated _includes comparing an average of the ratings given by the one or more other users to the one or more items to ratings given by the one or more other users to the item that the user has not yet rated (Chislenko: Col. 7, lines 13-28).

As per claim 9, Chislenko further discloses a method wherein the item is a movie and the one or more items are one or more movies (Chislenko: Col. 3, lines 5-15). The Examiner again notes that even though Chislenko discloses a method according to claim 9 as indicated supra, data identifying a particular item type is not functionally related to the substrate of the method. Thus, this descriptive material will

not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1391, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

As per claim 10. Chislenko further discloses a method wherein the item is a game and the one or more items are one or more games (Chislenko: Col. 3, lines 5-15).

Even though Chislenko discloses a method according to claim 10 as indicated *supra*, the Examiner notes, data identifying a particular item type is not functionally related to the substrate of the method. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1391, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

As per claim 11, Chislenko discloses a method wherein the item is a rental item (Chislenko: Col. 3, lines 5-15).

As per claim 12, Chislenko further discloses a method wherein the number of items in the one or more items is at least a specified number of -items (Chislenko: Col. 10, lines 15-31).

Claims 13, 16-24 are rejected under the same rationale set forth for claims 1, 4-12.

Claims 28, 31-38 and 42 are rejected under the same rationale as set forth above in claims 1, 4-12.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Zurita
Patent Examiner
Art Unit 3625
30 August 2005


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